



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Monica Cruz Thornton (SBN 131446) Jennifer J. Capabianco (193371) SELMAN BREITMAN LLP 33 New Montgomery, Sixth Floor San Francisco, CA 94105-4537 TELEPHONE NO: (310) 445-0800 FAX NO. (Optional): (310) 473-2525 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff		982.1(20)
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street, Room 103 MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102-4514 BRANCH NAME:		FOR COURT USE ONLY San Francisco County Superior Court
PLAINTIFF: PACIFIC HEALTH ADVANTAGE dba PAC ADVANTAGE DEFENDANT: CAP GEMINI ERNST & YOUNG		FILED NOV 14 2006
<input checked="" type="checkbox"/> DOES 1 TO 10 <b>IMAGED</b>		APR 13 2007 - 9 AM
CONTRACT <input checked="" type="checkbox"/> COMPLAINT <input type="checkbox"/> AMENDED COMPLAINT (Number): <input type="checkbox"/> CROSS-COMPLAINT <input type="checkbox"/> AMENDED CROSS-COMPLAINT (Number):		CASE MANAGEMENT CONFERENCE SET DEPARTMENT 212
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint or cross-complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited		CASE NUMBER: CGC-06-457879

1. Plaintiff\* (name or names): PACIFIC HEALTH ADVANTAGE dba PAC ADVANTAGE

alleges causes of action against defendant\* (name or names): CAP GEMINI ERNST & YOUNG

2. This pleading, including attachments and exhibits, consists of the following number of pages: 7

3. a. Each plaintiff named above is a competent adult

except plaintiff (name):

- (1)  a corporation qualified to do business in California
- (2)  an unincorporated entity (describe):
- (3)  other (specify):

b.  Plaintiff (name):

a.  has complied with the fictitious business name laws and is doing business under the fictitious name (specify):

b.  has complied with all licensing requirements as a licensed (specify):

c.  Information about additional plaintiffs who are not competent adults is shown in Attachment 3c.

4. a. Each defendant named above is a natural person

except defendant (name):

except defendant (name):

- (1)  a business organization, form unknown
- (2)  a corporation
- (3)  an unincorporated entity (describe):
- (4)  a public entity (describe):
- (5)  other (specify):

- (1)  a business organization, form unknown
- (2)  a corporation
- (3)  an unincorporated entity (describe):
- (4)  a public entity (describe):
- (5)  other (specify):

**FAXED**

SHORT TITLE: Pac Advantage v. Cap Gemini

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## 4. (Continued)

b. The true names of defendants sued as Does are unknown to plaintiff.

(1)  Doe defendants (specify Doe numbers): 1-10 were the agents or employees of the named defendants and acted within the scope of that agency or employment.(2)  Doe defendants (specify Doe numbers): \_\_\_\_\_ are persons whose capacities are unknown to plaintiff.c.  Information about additional defendants who are not natural persons is contained in Attachment 4c.d.  Defendants who are joined under Code of Civil Procedure section 382 are (names):5.  Plaintiff is required to comply with a claims statute, and

- a.  has complied with applicable claims statutes, or
- b.  is excused from complying because (specify):

6.  This action is subject to  Civil Code section 1812.10  Civil Code section 2984.4.

7. This court is the proper court because

- a.  a defendant entered into the contract here.
- b.  a defendant lived here when the contract was entered into.
- c.  a defendant lives here now.
- d.  the contract was to be performed here.
- e.  a defendant is a corporation or unincorporated association and its principal place of business is here.
- f.  real property that is the subject of this action is located here.
- g.  other (specify):

8. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

 Breach of Contract Common Counts Other (specify): Fraud, Negligent Misrepresentation, Negligence.9.  Other allegations:

10. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

a.  damages of: \$ \$750,000 plusb.  interest on the damages(1)  according to proof(2)  at the rate of (specify):

percent per year from (date):

c.  attorney fees(1)  of: \$(2)  according to proof.d.  other (specify):11.  The paragraphs of this pleading alleged on information and belief are as follows (specify paragraph numbers):

Date: November 14, 2006

Monica Cruz Thornton (SBN 131446)

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(If you wish to verify this pleading, affix a verification.)

SHORT TITLE: Pac Advantage v. Cap Gemini

CASE NUMBER:

FIRST

(number)

## CAUSE OF ACTION - Breach of Contract

Page 3

ATTACHMENT TO  Complaint  Cross-Complaint

(Use a separate cause of action form for each cause of action.)

BC-1. Plaintiff (name): PAC ADVANTAGE

alleges that on or about (date):

 written  oral  other (specify):

agreement was made between (name parties to agreement): Plaintiff and Cap Gemini Ernst &amp; Young

 A copy of the agreement is attached as Exhibit A, or The essential terms of the agreement  are stated in Attachment BC-1  are as follows (specify):

On or about December 19, 2002 PacAdvantage entered into a written contract with defendant. The contract was entered into in San Francisco, CA. Pursuant to that contract defendant was to provide software implementation services to plaintiff. Plaintiff agreed to and did pay defendant monetary compensation for these services pursuant to the contract.

PacAdvantage has performed all conditions, covenants and promises required in accordance with the terms and conditions of the contract.

Defendant breached the above-referenced contract by failing to perform the acts required of it to satisfy the contract, specifically by failing to provide the services required of it under the contract. [SEE BC-6 BELOW]

BC-2. On or about (dates):

defendant breached the agreement by  the acts specified in Attachment BC-2  the following acts (specify):

BC-3. Plaintiff has performed all obligations to defendant except those obligations plaintiff was prevented or excused from performing.

BC-4. Plaintiff suffered damages legally (proximately) caused by defendant's breach of the agreement

 as stated in Attachment BC-4  as follows (specify):  
As stated above.BC-5.  Plaintiff is entitled to attorney fees by an agreement or a statute of \$ according to proof.BC-6.  Other: ATTACHMENT TO BC-1 (continued)

As a result of defendant's breach of the above contract, plaintiff has been damaged in an amount that is not yet certain but which is not less from \$750,000. Plaintiff will seek leave of court to amend the complaint to reflect the amount of such damages when the amount of such damages is more specifically ascertained.

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SECOND

(number)

## CAUSE OF ACTION - Fraud

Page 4ATTACHMENT TO  Complaint  Cross-Complaint

(Use a separate cause of action form for each cause of action.)

FR-1. Plaintiff (name): PAC ADVANTAGE

alleges that defendant (name): CAP GEMINI ERNST &amp; YOUNG

on or about (date): In and about 12/19/02 and on defrauded plaintiff as follows:

FR-2.  Intentional or Negligent Misrepresentationa. Defendant made representations of material fact  as stated in Attachment FR-2.a  as follows:

Commencing on or about 12/19/02 and thereafter, defendant through its principals and agents represented that it would provide software implementation management services, provide project management services, remediation and testing of the PX2 System.

b. These representations were in fact false. The truth was  as stated in Attachment FR-2.b  as follows: Defendants in fact did not provide the services noted hereinabove, failed to provide appropriate project management services, remediation and testing as represented and failed to disclose same.

c. When defendant made the representations,

 defendant knew they were false, or defendant had no reasonable ground for believing the representations were true.

d. Defendant made the representations with the intent to defraud and induce plaintiff to act as described in item FR-5. At the time plaintiff acted, plaintiff did not know the representations were false and believed they were true. Plaintiff acted in justifiable reliance upon the truth of the representations.

FR-3.  Concealmenta. Defendant concealed or suppressed material facts  as stated in Attachment FR-3.a  as follows:

Defendants in fact did not provide the services noted hereinabove, failed to provide appropriate project management services, remediation and testing as represented and failed to disclose same.

b. Defendant concealed or suppressed material facts

 defendant was bound to disclose. by telling plaintiff other facts to mislead plaintiff and prevent plaintiff from discovering the concealed or suppressed facts.

c. Defendant concealed or suppressed these facts with the intent to defraud and induce plaintiff to act as described in item FR-5. At the time plaintiff acted, plaintiff was unaware of the concealed or suppressed facts and would not have taken the action if plaintiff had known the facts.

(Continued)

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SECOND  
(number)

## CAUSE OF ACTION - Fraud (Continued)

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FR-4.  Promise Without Intent to Perform

a. Defendant made a promise about a material matter without any intention of performing it  as stated in Attachment FR-4.a  as follows:

b. Defendant's promise without any intention of performance was made with the intent to defraud and induce plaintiff to rely upon it and to act as described in item FR-5. At the time plaintiff acted, plaintiff was unaware of defendant's intention not to perform the promise. Plaintiff acted in justifiable reliance upon the promise.

FR-5. In justifiable reliance upon defendant's conduct, plaintiff was induced to act  as stated in Attachment FR-5  as follows: Plaintiffs were induced to and did rely on defendant's representations that project management services including remediation and testing of PX2 would be provided.

FR-6. Because of plaintiff's reliance upon defendant's conduct, plaintiff has been damaged  as stated in Attachment FR-6  as follows: Plaintiff incurred the claims of several healthcare providers for reimbursement of expenditures which were erroneously incurred due to defendant's aforementioned representations .

FR-7. Other:

Selman Breitman LLP  
ATTORNEYS AT LAW

1 ATTACHMENT

CASE NO. \_\_\_\_\_

2 SHORT TITLE: PAC ADVANTAGE V. CAP GEMINI

3 FR-8:

4 **THIRD CAUSE OF ACTION-BREACH OF FIDUCIARY DUTY**

5 (Against Defendant CAP GEMINI ERNST &amp; YOUNG and DOES 1 to 10.)

6 Plaintiff PAC ADVANTAGE alleges that Defendant CAP GEMINI ERNST &  
7 YOUNG ("CAP GEMINI") were retained by plaintiff for consultation and services for  
8 software implementation management of a system known as PX2. As such, defendants  
9 owed plaintiff a fiduciary duty to perform the services, disclose all material facts and  
10 provide software implementation management services in connection with the PX2  
11 System. Defendant breached its fiduciary duty to plaintiff when it failed to properly  
12 perform the management services, remediation and testing as a representative would do  
13 and failed to disclose same. Pac Advantage relied upon defendant and defendant's  
14 expertise in this relationship for implementation of the software management of PX2  
15 including testing thereof. It was not until November of 2003 and thereafter that Pac  
16 Advantage learned of defendant CAP GEMINI's failure to properly implement the PX2  
17 System, testing and remediation for which it was retained and upon which PAC  
18 ADVANTAGE relied on defendant to perform. Further, defendant failed to and did not  
19 disclose its failure to properly implement management, remediation and testing of the PC2  
20 System.

21 As a result of the defendant's breach of fiduciary duties plaintiff PAC  
22 ADVANTAGE has been damaged in the amount of at least \$750,000 based upon claims  
23 from third party providers, and subject to proof.

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FOURTH

(number)

## CAUSE OF ACTION - General Negligence

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ATTACHMENT TO  Complaint  Cross-Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): PAC ADVANTAGE

alleges that defendant (name): CAP GEMINI ERNST &amp; YOUNG

 Does 1 to 10

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff

on (date): Date of contract

at (place): And Continuing location of performance of services, San Francisco, CA

(description of reasons for liability):

Defendant negligently failed to perform professional services, failed to disclose failure to perform, performance fell below the standard of care thereby being the proximate cause of damages to Pac Advantage. Plaintiff did not incur actual damages until after discovery of defendant's negligence and actual damages until on or about August of 2006 and subject to proof.